



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,967	09/19/2005	Dirk Arno Fiedler	22409-00356-US	7967

30678 7590 11/03/2009
CONNOLLY BOVE LODGE & HUTZ LLP
1875 EYE STREET, N.W.
SUITE 1100
WASHINGTON, DC 20006

EXAMINER

CREPEAU, JONATHAN

ART UNIT	PAPER NUMBER
----------	--------------

1795

MAIL DATE	DELIVERY MODE
-----------	---------------

11/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/526,967	Applicant(s) FIEDLER, DIRK ARNO	
	Examiner Jonathan Crepeau	Art Unit 1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 14, 15 and 18-22 is/are rejected.
- 7) ☒ Claim(s) 6-13, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/7/09 3/7/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 13, 16, and 17, which were nonelected in the response of September 30, 2009 have been rejoined herein because generic claim 6 has been found to contain allowable subject matter. Election was made **without** traverse in the reply filed on September 30, 2009. Claims 39-52 have been cancelled.

Drawings

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1795

4. Claims 14, 15, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the limitation "the first positive lid" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim. Further, if this limitation is interpreted as the first positive contact, claims 14 and 15 are then substantial duplicates of claims 8 and 9.

Claim 22 recites an "inactive backbone electrode." This recitation should be "inactive backbone of an electrode," as disclosed in [0026] and [0043] of the instant specification. Correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Pedicini et al (U.S. Patent 5,569,551). The reference teaches a dual air electrode metal/air cell comprising a first cathode (50) connected to first electrical contact (tab) (53), and a second cathode (60) connected to a second electrical contact (tab) (53) (see Fig. 5; col. 4, line 48 et seq).

Art Unit: 1795

The first and second cathodes are separated from an anode (41) by separators (70, 80). The casing comprises plastic masks (21, 22) with holes (26) that function as the means to allow air into the battery to provide oxygen to the first and second cathodes. Regarding claim 2, the cathode comprises catalyzed carbon (see column 6, line 37). Regarding claim 3, the anode comprises zinc (see col. 7, line 17). Regarding claim 4, the electrolyte comprises KOH (see column 8, line 7). Regarding claim 5, the battery is a thin battery and therefore is a "button" battery. Regarding claim 21, the separators are capable of performing the claimed function. Regarding claim 22, the battery comprises an electrically conductive yet electrochemically inactive backbone of an electrode (carbon black particles; see col. 6, line 33).

Note: each of the "means to" recitations in the instant claims is not considered to invoke 35 USC 112, sixth paragraph because "means for..." language is not used (MPEP 2181).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedicini et al. in view of Guo et al (U.S. Patent 6,602,629).

Pedicini et al. is applied to claims 1-5, 21, and 22 for the reasons stated above. However, the reference does not expressly teach that the battery comprises adhesive tabs to prevent entry of air to the first or second cathodes, as recited in claims 18 and 19.

Guo et al. is directed to a metal-air cell. In column 7, line 7, the reference teaches that "a suitable tab (not shown) can be placed over the opening 18 until the cell is ready for use to keep air from entering the cell before use."

Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made because the artisan would be motivated to use the tab of Guo et al. to keep the cathodes of Pedicini sealed until the cell is ready for use. Further, regarding claim 20, the recitation of metal-polymer laminates is not considered to distinguish over the references because these laminates are known for use as oxygen barriers. Accordingly, claims 18-20 would be rendered obvious.

Allowable Subject Matter

9. Claims 6-13, 16, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 14 and 15 would additionally be allowable if rewritten to overcome the rejections under 35 USC 112 second paragraph.

10. The following is a statement of reasons for the indication of allowable subject matter:

Dependent claim 6 recites, among other features, that a casing of the button battery is formed by the positive contact and negative contact together with an insulating gasket. Pedicini

Art Unit: 1795

et al., the closest prior art, teaches casing members (21, 22) that are electrically insulating and do not function as electrical contacts. Accordingly, the subject matter of claim 6 is not taught or fairly suggested by Pedicini et al.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Crepeau whose telephone number is (571) 272-1299. The examiner can normally be reached Monday-Friday from 9:30 AM - 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Basia Ridley, can be reached at (571) 272-1453. The phone number for the organization where this application or proceeding is assigned is (571) 272-1700. Documents may be faxed to the central fax server at (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jonathan Crepeau/
Primary Examiner, Art Unit 1795
November 3, 2009